

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

M.J.,)
)
Plaintiff,)
)
v.) Cause No. 4:12-CV-00341 JAR
)
WASHINGTON UNIVERSITY)
IN ST. LOUIS PHYSICIANS, et al.)
)
Defendants.)

**DEFENDANTS MARK WRIGHTON, LARRY J. SHAPIRO,
JAMES P. CRANE, CLAY M. SEMENKOVICH, MICHAEL A. KASS,
ANN BRADLEY, NEILL M. WRIGHT, RHONDA F. KIDWELL,
RALPH G. DACEY, JR., AND PATRICIA FISHER'S
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Defendants Mark Wrighton, Larry J. Shapiro, James P. Crane, Clay M. Semenkovich, Michael A. Kass, Ann E. Bradley,¹ Neill M. Wright, Rhonda F. Kidwell, Ralph G. Dacey, Jr., and Patricia Fisher (collectively "Employee Defendants") move for dismissal of the action against them pursuant to Fed. R. Civ. P. 12(b)(6) and in support thereof state:

1. Employee Defendants are officers and employees of Defendant Washington University.² (Compl. caption, ¶ 3.)

¹ Defendant Ann E. Bradley has not been served with process as of the date of this motion. Ms. Bradley joins this motion with full reservation of all defenses and objections to process, service of process, and personal jurisdiction.

² Plaintiff named Washington University in St. Louis Physicians, Washington University School of Medicine, and Washington University Medical Center as defendants, but the properly named defendant is "The Washington University."

2. The complaint alleges that defendants Mark Wrighton, Larry J. Shapiro, James P. Crane, Clay M. Semenkovich, Michael A. Kass, Neill M. Wright, and Patricia Fisher engaged in conduct in their capacities as officers and employees. (Compl. ¶¶ 7, 24, 28.) There are no allegations of these defendants acting outside of their capacities as employees.

3. The complaint makes no allegations that defendants Ann E. Bradley, Rhonda F. Kidwell, and Ralph G. Dacey, Jr. engaged in any conduct.

4. It is well-settled under Missouri law that “merely holding a corporate office will not subject one to personal liability for the misdeeds of the corporation.” *Harvey v. Citimortgage, Inc.*, No. 4:10CV551, 2011 WL 1226973 at *2 (E.D. Mo. March 29, 2011); *Lynch v. Blanke Baer & Bowey Krimko, Inc.*, 901 S.W.2d 147, 153 (Mo. App. E.D. 1995).

4. Furthermore, officers or employees are not individually liable and cannot be sued as individuals unless (1) the individuals were acting in their personal capacities and not on behalf of the employer, and (2) the individuals had knowledge of the wrongful conduct. See *Harvey*, 2011 WL 1226973 at *2 (dismissing fraud claim against individuals where allegations were made against individuals in their capacities as agents and officers of their employer); *Lynch*, 901 S.W.2d at 153-54 (dismissing wrongful discharge claim against the president of a corporation for failure to state a claim where the president’s action in terminating the plaintiff was taken on behalf of the corporation and not in his personal capacity).

5. In the case at hand, there is no allegation that Employee Defendants acted in their personal capacities and not on behalf of defendant The Washington University, or that they had any knowledge of the allegedly wrongful conduct. Indeed, there is no allegation that Ann E. Bradley, Rhonda F. Kidwell, and Ralph G. Dacey, Jr. did anything beyond being employed by defendant The Washington University. Thus, as a matter of law, the petition fails to state a claim against Employee Defendants.

WHEREFORE, defendants Mark Wrighton, Larry J. Shapiro, James P. Crane, Clay M. Semenkovich, Michael A. Kass, Ann E. Bradley, Neill M. Wright, Rhonda F. Kidwell, Ralph G. Dacey, Jr., and Patricia Fisher request that the action against them be dismissed, that they be awarded their costs and fees as permitted by law, and that the Court grant such other relief as is appropriate in the circumstances.

KOHN, SHANDS, ELBERT,
GIANOULAKIS & GILJUM, LLP

/s/ Mark J. Bremer

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd of March, 2012, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Matthew S. Chase, The Chase Law Firm, PC, 231 South Bemiston, Suite 800, Clayton, MO 63105-1925, attorney for plaintiff.

/s/ Mark J. Bremer